IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 23701 of 2007(V)

PETITIONER:

SRI. S.M. MAGUDU MEERAN,
PROPRIETOR, M/S. ASWATH SAW MILL, 1/369-C,
COURTALLAM CROSS ROAD, PIRANOOR BORDER,
SHENCOTTAI-627 809.

BY ADV. SRI.E.P.GOVINDAN
SRI.R.D.GANESAN

RESPONDENTS:

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1. THE INTELLINGENCE OFFICER (IB)
COMMERCIAL TAXES, TRICHUR.

2. STATE OF KERALA REPRESENTED BY
SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT,TRIVANDRUM.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ALONG WITH WPC NO.23734/2007 & CONN. CASES ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) Nos.23701, 23839, 23838,
23767, 23803, 23731 & 23734 of 2007

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Dated this the 10th day of August, 2007.

JUDGMENT

The petitioners are timber dealers from outside Kerala against whom protective assessments under Section 19C and consequential penalty orders under Section 45A of the KGST Act for evasion of tax liability are passed. The transactions were apparently interstate sales to registered dealers in Kerala. Though the purchasers were given C Form Books and had CST registration, they did not have timber yards or the facilities to handle the quantity of timber stated to have been purchased by them from the petitioners is the case of the Department. The department after collection of information confronted the consignor, consignee and their agents for confirmation of sales. While petitioner supported interstate sale from State of Tamil Nadu to Kerala, purchasers completely denied the transactions. However, it is seen that transactions in most cases are covered by C Forms issued by purchasers. Purchasers have put up a case that they had lost C Form books which would have been misused by somebody resulting in C Forms reaching the hands of the petitioners. The protective assessments were made both against the petitioners and against consignees and also

against the agents. On appeal against protective assessments, the Sales Tax Appellate Tribunal vide Ext.P5 order produced in W.P. 23734/2007 allowed the appeals filed by the petitioners holding that consignees are the real purchasers and therefore, the protective assessments made against them were confirmed exonerating the petitioners. There is nothing to indicate that the State has filed revision against the orders of the Tribunal.

2. The present W.Ps. are filed against penalty orders issued consequent upon protective assessments made against petitioners under Section 19(C) read with Section 30B(4) of the KGST Act. I do not find there is any necessity to go into the meticulous details of the case because the findings of the Tribunal which is the final fact finding authority, pertain to same transactions. If assessments stand cancelled, then I see no reason why penalty could be levied under Section 45A of the KGST Act for evasion of tax. If the Tribunal's order is accepted by the Department and if the finding of the Tribunal is that the consignees are responsible, it is for the department to pursue the matter against the consignees for recovery of tax and penalty if any. However, if Tribunal's orders are reversed by this court in revision or otherwise, it is open to the respondents to proceed in the penalty proceedings which stands remanded by first revisional order. The W.Ps. are therefore allowed directing respondents not to pursue penalty

proceedings as long as Tribunal's order Ext.P5 referred to above stands. I make it clear that this judgment does not bar further investigation or fresh proceedings against petitioners or consignees or agents.

3. I am constrained to observe that it is absolutely on account of lack of co-ordination between the Check Post authorities and the Assessing Officers that this kind of fraud takes place leading to massive evasion of tax.

C.N.RAMACHANDRAN NAIR
Judge

pms